

# TILL DEATH DO US

## PART

By Nikki Meredith

between the bed and the door and I shot him twice. I looked at him as he was lying there. I knew he was dead but his eyes were open and he was looking at me. I knew he was dead but he still scared me. Even now, he still scares me."

At the other end of the state from Frontera, in a small Northern California town, Audrey Shaw (not her real name) lives with her children in a comfortable house with a swimming pool. A ranch wagon is parked in the driveway. She is a big, friendly woman who works with delinquent children. Joseph Shaw, to whom she was married for eighteen years, was an employee of the federal government.

On November 3, 1980, in the bedroom of their home, Audrey aimed a .22-caliber revolver at her husband and shot him in the head. He was rushed to a hospital where he lingered for three days and then died. He was survived by his four children — daughters aged seventeen, thirteen and twelve, and an eight-year-old son. Here is Audrey's story:

"I married Joseph when I was only eighteen years old. He was a happy-go-lucky person and easy to be with and I was so impressed with his determination. If Joseph said he would do something, he wouldn't let anything get in his way. He said he was going to get a college education and, even though it wasn't easy, he did. Whatever he decided to do, he did well.

"Although he always had a bad temper, those first years were good ones. The deliveries of all our babies were especially happy times for us. He loved his three girls but he was so excited when the last baby turned out to be a boy. His son was his pride and joy and the saddest thing about it was that in the end, when things got bad, he was more hateful to him than he was to the other kids.

"I really don't know what started going wrong. He started drinking a lot and then his temper got real bad. First he started attacking me and then he started hitting the kids. We learned if he wasn't in a good mood to just leave him alone, but he was

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For most of us, the concept of self-defense is an abstract one — an armchair debate over what conditions justify the use of violence over passive resistance or escape. The fact is, none of us knows how he or she would react until actually threatened. As Oliver Wendell Holmes observed in a 1921 Supreme Court case, "Detached reflection cannot be demanded in the presence of an upraised knife."

The problem of detached reflection is compounded when applied to killers who were intimately involved with their victims. Hence, when a wife claims self-defense after killing her husband, it becomes particularly difficult to accurately reconstruct the events leading to his death.

Husband-killing is probably almost as old as marriage itself, but law enforcement officials feel it has increased in recent years, partly because of the widespread availability of handguns. No official count is made, but one inmate at the California Institution for Women at Frontera in Southern California — the state's only prison for women — says that in her two years there, she has encountered more than 100 women who are self-made widows, common-law and otherwise.

Not all of these women claim that their killings were motivated by self-protective instincts — jealousy also ranks high — but the plea of self-defense is being heard with increasing frequency in California as well as nationwide.

Such a plea was made by Harriette Davis, a woman who is serving a six-year sentence at Frontera for killing Henry Hayes, the father of her daughter and the man to whom she was tied in an eight-year tangle of obsessive, possessive love and egregious brutality.

Harriette Davis is a dark-eyed, dark-haired young woman with a manner just short of surly. Her face shows traces of the lovely child she must have been, but the joy is drained from her being. She is introspective and self-educated beyond her high school diploma. The words come easily as she talks about May 30, 1981 — the day she reached for a .38-caliber revolver and

shot Henry Hayes as he lay sleeping.

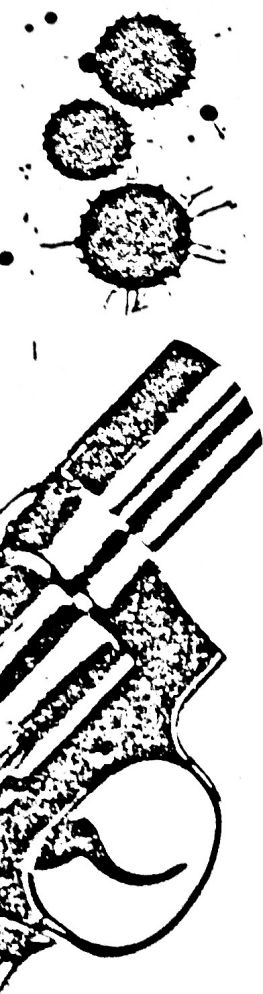
"I don't know why it was different that night because he had beaten me so many times before. I just felt like I was going to die. There were no thoughts in my head, only fragments of feelings that weren't all connected. I just knew I couldn't go through it again. My eyes were blurry and they hurt, my legs ached from too many broken blood vessels, my jaw was out of line, my teeth were chipped. I just felt like he was killing me and I couldn't stand it anymore.

"He had come home at 3 a.m. while I was asleep and started yelling at me. He was angry because he had tried to call earlier and I was on the phone with my mother. It had gotten to the point in our relationship where I couldn't go anywhere or talk to anyone, including my mother, without his permission.

"He started pushing me and hitting me — he ripped my nightgown off and started beating my head against the wall, yelling that I was a worthless tramp. After what seemed like hours he ordered me to get him a beer and then lay down on the bed and forced me to lie down with him. He kept saying he wasn't through with me yet. He dozed off.

"When I thought he was asleep I tried to get up quietly but he woke up and grabbed me, then dozed off again. I carefully reached behind the bed where he kept his gun. I kept thinking that I had to leave and nothing was going to stop me. As I got off the bed, I bumped it and he woke up and called my name. I was standing

When an abused wife is driven to killing her husband, can the act be considered self-defense?



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unpredictable and sometimes even that didn't work.

"One night he came home angry — I don't know what the hell he was mad about, but he was yelling and screaming and he got into it with one of the kids. He went outside and came back in the house with an axe and started chasing me. He caught me and slung it towards me, gashing my head. The kids called the police and they came, took the axe and hid it in the bushes. Later, during my trial, they said they don't like to take husbands away in those situations because it causes more hardship to the families.

"I kept thinking that he would go back to the way he was. When you have so many good years, you just don't walk out the door because things start getting bad. I kept thinking it was somehow my fault — that he was unhappy because I wasn't doing enough for him. I would ask him, 'Joseph, what's wrong? Why are you so unhappy with us?' and he would say, 'I can't stand it, the house is always messy.' So I'd think, well, I guess he's right, he works hard at his job and the house hasn't been very clean. So as soon as I'd get off work, I'd come home and clean the house. But it didn't help. Then he said it was because I wasn't preparing good enough meals. I thought, well, I guess he's right — he deserves better than Hamburger Helper, so I'd start preparing his favorite dishes, but nothing changed. Finally, one of my daughters said, 'What are you going to do next, Mom? Are you going to wait until he kills you?' I turned to her and said, 'Once I know in my mind that I've done everything I can possibly do, then maybe I can walk away — but not until then.' I kept thinking he didn't start out being this way so when he started to change I thought maybe it was me.

"One night when he was really loaded he got out his rifle. He said he was going to show his son how to hunt. I had hidden the clip because I was so worried about his behavior. When he discovered that it was missing he demanded that I get it. I said I didn't know where it was. He got angry and said, 'I don't need a clip.' He got some bullets and loaded the gun and pointed it at me. He held me like that for almost three hours. At first I thought he was playing some weird game and I didn't think he would hurt me and I didn't want to frighten the kids. But after a while they started crying and begging him to stop. He kept saying, 'See how easy it would be for me to kill you if I wanted to?'

"I finally decided that I had to get out of the relationship. He'd been away for a couple of days and when he came home we

got into a fight because he hadn't made the mortgage payment. I asked him to pack his things and leave. He hit me and for the first time in our marriage, I hit him back. He came after me and I tried to climb out the window but he knocked me down. I reached under the bed for the gun that we kept there. I don't remember what happened next except I know I shot him twice. I never thought he would die. After the police came, my only thought was, when he gets well, he's going to kill us all."

**B**oth Harriette Davis and Audrey Shaw were charged with first-degree murder. Both pleaded self-defense. Harriette was convicted of voluntary manslaughter and sentenced to six years. (Initially, the court suspended her sentence, but a few months later she was arrested for drunken driving and the judge sent her to Frontera to serve out her full term.) Audrey was acquitted after the jury deliberated for only 40 minutes.

The fact that women like Harriette and Audrey are claiming self-defense in husband-killing cases — and are sometimes winning acquittals — is a new phenomenon in America and is causing expressions of concern from various legal experts who fear the trend is veering dangerously close to vigilante justice.

Traditionally, self-defense has been defined as the justifiable commission of a criminal act by using the least amount of force necessary to prevent imminent bodily harm or death. But a series of sensational cases in the 1970s involving women who killed men and pleaded self-defense has helped stretch the traditional definition. In 1975, Joanne Little, a North Carolina woman, was cleared of murder charges after stabbing the jailer who sexually assaulted her. In 1977, Inez Garcia, a California woman, was exonerated of murder charges after she sought out and killed a man who had helped rape her. And in the same year, the murder conviction of Yvonne Wanrow, a Washington state woman who had wounded one attacker and killed another, was overturned. In that case, the court ruled that the standard self-defense instructions that guide a jury in determining how a "reasonable man" would act when threatened by another man were not applicable to how a "reasonable woman" would react when threatened by a man who is both bigger and stronger. These cases and others showed that it was possible for a woman to successfully argue self-defense based on her perception of imminent danger at the time of the killing.

The fact that a wife is abused by her husband, however, does not entitle her to

kill him. Testimony about her abuse can be used only to establish those aspects of the couple's relationship which contributed to the wife's state of mind, i.e., her perception of danger at the time of the killing.

But the acceptance of testimony about what is now called "battered woman's syndrome" is only recent. Within the last few years, after many legal battles, courts in 25 states have ruled that the scientific knowledge about battered women is sufficient to warrant expert testimony.

Much of the research in the field has been conducted by Denver psychologist Dr. Lenore Walker, who has testified in numerous self-defense cases around the country. Essential to the plea of self-defense, she says, is an understanding of the complicated reasons women stay in these relationships, including economic dependence, the direct threat of being tracked down and killed if they leave and a condition she calls "learned helplessness."

The theory is based on experiments with animals conducted by psychologist Martin Seligman over twenty years ago. Seligman found that if you put dogs in a cage from which escape was impossible and then administered electrical shock on a random basis, the animal learned that no matter what response he made, he could not control the shock. Eventually, the dogs stopped trying to escape even when the experimenters opened the cage door. Based on these experiments and extensive interviews with women in violent situations, Walker concluded that once a battered woman learns her behavior won't stop the batterer's violence toward her, psychological paralysis sets in. "The key to understanding her behavior is not the actual fact of whether she is able to escape abuse, but her belief about whether she can," Walker says.

Janet Wardrip, a woman who was recently released from Frontera after serving a sentence for killing her physically and verbally abusive husband of ten years, attributes this immobilization to a form of brainwashing. "When you hear over and over again that you're stupid and worthless and can't do anything right, you begin to believe it. After a while you don't feel that you deserve a better life anyway, and you feel too dumb to figure out how to go about making things better for yourself."

Contrary to popular belief, Walker says most women who get involved in battering relationships are not masochistic and that it is quite possible for any "normal" woman to find herself with a man who abuses her. "The ones who remain in the relationship, however, do tend to have personality characteristics — such as low self-esteem

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— which make it more difficult for them to leave.”

She also says that, initially, men who become batterers don't seem different from the average man except that they tend to be very loving, and very good at establishing intimacy quickly. “If anything, I think that's what seduces the women in the first place. It isn't until they get a little more involved that they see what's happening. It is not unusual to find women marrying these men after very short courtships. It is so terrific to be so intensely involved that these women allow themselves to be swept off their feet even though their minds tell them to go slower.”

Walker says that this intensity is often a reflection of the men's excessive dependency needs, which make them acutely vulnerable to the fear of abandonment. It is this fear which is behind much of their violent behavior. “That doesn't mean that every man who has dependency needs is going to resort to battering. Somewhere these guys have learned that they can get what they need through violence.”

Both partners, then, are bound by an unspoken pact which, according to Walker, proclaims, “We may not make it together but alone we surely will perish.” And, as astonishing as it may seem, says Walker, “wives who are abused don't automatically stop loving their husbands.”

Further contributing to the bond is the sweet and apologetically loving way husbands frequently treat their wives after a violent episode — what Walker calls “loving contrition.” Husbands are repeatedly able to seduce their wives into believing things will truly be better, “from now on.” “It works,” says Walker, “because the woman wants to believe him, wants to keep the family together, and is so happy to have his love after he has mistreated her so badly.”

Ironically, she adds, it is sometimes after a period of “loving contrition” that husbands are killed. “When he starts up again, the wife's defenses are down and she has no guard against what he does to her. Before, she was on her guard constantly, but this time she really believes that it will be different and she relaxes and makes herself vulnerable. Then something snaps and she really loses it.”

Walker says many of the women she has interviewed described the men, just prior to the killing, as being somehow crazier. “Many women have told me that there was something about the way their husbands looked — something about their eyes, or their gestures. Something told them these guys had slipped out and there was no way to reach them.” Walker talks

about a recent case where the husband lined up the wife and children and said to them, one by one, "I don't love you, and I don't love you, and I don't love you and I don't love you. I'm going to kill myself and you're all coming with me." "He had threatened to kill himself before and he had threatened to kill them before," Walker says, "but he had never done anything quite like that." In an altercation following his proclamation, the wife killed him.

None of this, however, explains the element of overkill displayed in many of these situations. One of the most publicized husband-killing cases in recent years was that of Francine Hughes in Michigan who, after years of physical and mental torture, doused the bedroom where her husband was sleeping with gasoline and ignited it. In Kensington, California, schoolteacher Lillian Vidal, after enduring sexual and physical abuse from her physical husband, shot and killed him a few yards from their home and then ran into the house, reloaded and shot the rest of the bullets into his lifeless body. In Hayward, California, Sandra Emerson plunged a knife into her abusive husband's heart and then followed him as he staggered out the front door, yelling, "Die, Willie, die!" Within a few minutes, however, the neighbors heard her screaming, "Don't die, Willie, don't die!"

Dr. Jules Burstein, a Berkeley psychologist who has testified in many self-defense cases, says this overkill phenomenon is triggered by the act of fighting back. "The first shots are fired because of the perception of physical threat but the act of fighting back unleashes a reservoir of repressed rage and the woman 'snaps.'"

An attorney involved in a 1978 Louisiana case of a woman who fired thirteen shots into her husband who had abused her for eleven years, says, "The first two shots were self-defense; the other shots were for all the years her husband beat her."

But was it self-defense? The deputy district attorney who prosecuted Audrey Shaw says probably not. "What I see happening in these situations is that the husband assaults the wife once too often and she gets mad and kills him. Typically, as it was in the case of Mrs. Shaw, the women can describe plenty of prior incidents when killing would have been justified — like the time her husband went after her with an axe. But this time, by her own description, the battery he committed was not nearly as serious as previous ones, and he was clear across the room when she shot him.

"What happens when we try these cases — and I have lost three of them now — is

that the juries are so disgusted with the husband's behavior that they either ignore the self-defense instructions pertaining to imminent harm or twist them so they can acquit as fast as possible. The law does not allow you to kill someone today because you know that that person is going to kill you tomorrow. The timing is essential. In one of the cases I lost, I strongly believed that it was an execution.

"What these juries are doing is called jury nullification, which means that when a jury doesn't like something morally it tends to ignore the law and render some sort of rough justice."

Ron Rico is a Santa Clara County deputy district attorney who prosecuted Helen Ann Harwood, a woman who was acquitted of killing her violently abusive husband of ten years as he was walking in the door of their house. (She said she warned him to stay out.) Rico will not comment on that case but says that generally, when juries acquit these women, they are extending the law of self-defense to encompass preventive strikes. "Being abused in the past and believing that you will be harmed in the future does not justify the use of deadly force.

"It's perfectly understandable that one could identify with the wife in these cases, but we are supposed to live in a society of laws, and to allow emotions to control legal decisions risks a return to vigilanteism."

"It is simplistic to call these cases vigilanteism," says Jerry Schwartzbach, a San Francisco attorney who won an acquittal in a well-publicized self-defense case in 1981. "A preventive strike — meaning 'I'll kill him before he kills me' — is exactly what self-defense is. I don't have to wait until you actually shoot me until I shoot you." Schwartzbach's client, Dolores Churchill, shot her police officer husband at pointblank range on Market Street after enduring seven years of beatings and bizarre sexual abuse. Her husband survived his wounds but she was charged with attempted murder and assault with a deadly weapon. "The basis of these cases is how vulnerable these women are and how helpless they feel — that's what battered woman's syndrome is all about."

Obviously, self-defense is the hardest to prove when a man is sleeping or lying down. Burstein says he won't testify in cases where the wife shot the husband while he was sleeping. "No matter how terrible the circumstances, I would have a difficult time persuading myself that there was no way she could get away." Walker says she would testify under those circumstances if the husband's cycle of violence included a pattern of sleeping and then

battering.

San Diego attorney Mario Conti unsuccessfully attempted a self-defense argument when he represented Mary Louise Player, a woman who shot and killed her violent and abusive husband when he was lying drunk on the couch. (She was convicted of second-degree murder and given a three-year prison sentence.) "Given his history of violence and brutalizing her, what should she have done if she felt endangered? Waited until he sat up before she shot him? Or should she have waited until he took a first step toward her? Or, to make it fair, should she have waited until he actually lunged at her before she shot him? In order for it to have been self-defense, how much of an advantage would she have had to give him?"

**R**egardless of whether they win or lose their cases, most of these women continue to suffer. "I have worked with a large number of men who have killed under a variety of circumstances and none have suffered as much remorse as these women do," says Burstein.

Audrey Shaw says for a while she wished that Joseph had killed her instead. "I have replayed the scene over and over in my mind, wishing I could go back. For a long time I just couldn't deal with all the questions. Why it happened, how it happened and why did it happen to me.

"After Joseph died, my children and I went to see a psychologist to help sort things out. He asked my daughter how she felt about the fact that her mother killed her father. She said, 'My mother didn't kill my father. My mother killed a man who was dressed in my father's clothes. He wasn't acting like my father anymore.' That helped me put it in perspective.

"We're making it all right as a family now, but sometimes on Saturday afternoon I'll be fixing dinner and I realize that I'm waiting for Joseph to come home. I feel so sad about all the things he's missed. He missed his daughter's graduation from high school, he missed seeing his son get old enough to play on Little League, he missed our first grandchild. There's so much he'll never see."

Harriette Davis says she still wrestles with the right and wrong of her actions. "I never have taken lightly the fact that I killed him — there are a lot of people who loved him — I loved him — but I don't think there was another way. I say that knowing that I hate being in prison. There is nothing I like about it. But I have to say that as bad as it is, my life is better now than it was with Henry." □